

Serial No. 10/765,829

Attorney Docket No. 26DT-001-DIV

REMARKS

None of the Office Actions issued in this application have checked any of the boxes in part 12 of the Office Action Summary. However, the applicants filed a certified copy of the priority document with the parent application, Ser. No. 09/757,643, now U.S. Pat. No. 6,705,483. The PAIR system shows that the priority documents were received. In the office communication mailed 29 September 2006, the examiner promised to inquire to correct to error; however, the error has not yet been corrected. Therefore, the applicants respectfully request acknowledgement of the claim for priority under section 119 and notice that the certified copy of the priority document has been received.

The applicants appreciate the indication that claims 21-24 should be allowable if rewritten in independent form and to overcome the rejection under 35 USC 112, second paragraph. New claim 26 is claim 21 rewritten in allowable form to include claim 18, revised to address the rejection under 35 USC 112, second paragraph. New claims 27-28 depend from allowable claim 26, and correspond to current claims 22-23, respectively. Therefore, it is respectfully submitted that new claims 26-28 are allowable.

Claims 18, 19 and 21-28 are pending. Claims 10-12 have been withdrawn. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

The examiner requires a new title of the invention. The title is amended to adopt the title suggested by the examiner. Therefore, withdrawal of the objection to the specification is respectfully requested.

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Also, the office action objects to claims 18, 19 and 21-25 because "fuel tank fueling device cap detent unit" is awkward. The wording has been changed to "cap detent unit for fuel tank fueling device" or "cap detent unit." Withdrawal of the objection is respectfully requested.

Claims 18, 19 and 21-25 were rejected under 35 USC 112, second paragraph, as being indefinite. Claims 21-24 were rejected because claim 21 depends from canceled claim 20. The dependency of claim 21 is corrected by way of the above amendment. Claim 18 was rejected because the structure allegedly "is not clearly set forth in the claims;" claims 19 and 21-25 apparently were rejected due to their dependency from claim 18. Claim 18 has been carefully reviewed and revised to address each of the issues raised in paragraph 4 of the office action. In view of the above amendments, the examiner is respectfully requested to reconsider and withdraw the rejection under 35 USC 112, second paragraph.

Claims 18, 19 and 25 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 4,142,765, Henning et al. ("Henning") in view of U.S. Patent No. 3,306,483, Bellafiore ("Bellafiore"). Independent claim 18 is amended to further recite "wherein the tether forms a curved-shape when the engaged component is attached to the detent." Insofar as the rejection may be applied to the claims as amended, the rejection is respectfully traversed for reasons including the following, which are provided by way of example.

Independent claim 18 recites in combination, for example, "a cap retainer for retaining a fuel cap; a flexible elongate tether extending from the cap retainer, and having a first end connected to the cap retainer and a second end opposite to the first end; an attachment formed on an end of the tether for attaching to a vehicle body member, wherein the vehicle body member is an attaching member, wherein the attaching member is an interior of a lid panel covering the fuel cap, and wherein the attaching member is exposed to an outside of the vehicle when the lid panel

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covering the fuel cap is opened for fueling; and a detachable component having a detent formed on the cap retainer and an engaged component formed on the second end of the tether, the engaged component being detachably attached to the detent, wherein the tether forms a curved-shape when the engaged component is attached to the detent.”

Consequently, there is a detachable component that has a detent formed on a cap retainer and an engaged component formed on the second end of the tether. The engaged component is detachably attached to the detent. When the engaged component is attached to the detent, the tether forms a curved-shape, and the detachable component suspends a fuel cap at a position adjacent to an attachment, thereby preventing the fuel cap from becoming an obstacle while fueling.

To properly reject a claimed invention, the examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness with respect to a claimed invention, all the claim limitations must be taught or suggested by the prior art reference (or references when combined). *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Furthermore, the teaching or suggestion to make the claimed combination and a reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). The examiner bears the burden of establishing this *prima facie* case. *In re Deuel*, 34 U.S.P.Q.2d 1210, 1214 (Fed. Cir. 1995). If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of patent. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

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The applicants provide herein a selection of some examples of limitations in the claims which are neither taught nor suggested by Henning or Bellafiore, alone or in combination.

The office action cites Henning, FIG. 3 as disclosing "a vehicle body ember covering a fueling port inlet and a fuel cap." The Office Action admits that "Henning does not disclose a fuel tank fueling device cap detent unit." (Office Action, page 4). Recognizing that Henning fails to teach and/or suggest the invention as claimed, Bellafiore is cited to remedy the deficiencies.

Nevertheless, Bellafiore fails to remedy such deficiencies. The cap device of Bellafiore comprises an engagement element (26) projecting from a cap retainer (12) attached to a cap (32), a flexible elongate tether (22) having a first end (28) connected with the engagement element (26) of the cap retainer and a second end (24) formed opposite to the first end of the tether, and an attachment element (10) for attaching the second end (24) of the tether (22) to a container (30). The cap (32) only hangs from the attachment element (10) via the tether (22) and is not supported near the attachment element (10), when the cap (32) is removed from the opening of the container (30). Bellafiore fails to teach or suggest, for example, a detachable component as recited in independent claim 18: "a detachable component having a detent formed on the cap retainer and an engaged component formed on the second end of the tether, the engaged component being detachably attached to the detent, wherein the tether forms a curved-shape when the engaged component is attached to the detent."

Hence, Henning and Bellafiore, alone or in combination, fail to teach or suggest the combination of features recited in independent claim 18, when considered as a whole.

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With respect to the rejected dependent claims, the applicants respectfully submit that these claims are allowable not only by virtue of their dependency from independent claim 18, but also because of additional features they recite in combination.

The applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. The applicants do not concede that the cited prior art shows any of the elements recited in the claims. However, the applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

The applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples the applicants have described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, for the sake of simplicity, the applicants have provided examples of why the claims described above are distinguishable over the cited prior art.

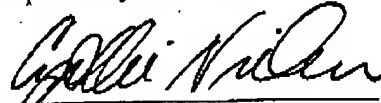
In view of the foregoing, the applicants submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

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If there are any problems with the payment of fees, please charge any underpayments and credit any overpayments to Deposit Account No. 50-1147.

Respectfully submitted,



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